

ORDER No. 2008-0014

AN ORDER FINDING THAT PROPERTY LOCATED AT 4813 E. PORTLAND ROAD, YAMHILL COUNTY TAX LOT 3216-1000, MEETS THE APPLICABLE NEWBERG DEVELOPMENT CODE CRITERIA TO BE ANNEXED INTO THE CITY, AND MEETS THE APPLICABLE CODE CRITERIA TO CHANGE THE ZONING FROM COUNTY AF-10 TO CITY R-1, R-2 AND C-2

RECITALS:

1. On March 26, 2008 NewB Properties LLC submitted an application to annex one parcel (approximately 5.8 acres) into the City of Newberg with a concurrent zone change to R-1 (Low Density Residential), R-2 (Medium Density Residential) and C-2 (Community Commercial) for property located at 4813 E. Portland Road, Yamhill County tax lot 3216-1000.
2. The Newberg Planning Commission heard the annexation and zoning amendment on June 12, 2008, took public testimony, and continued the hearing to July 10, 2008 to allow ODOT time to review the supplemental traffic study and revised findings. The Planning Commission continued the hearing on July 10, 2008, reviewed the supplemental traffic study and revised findings, reviewed ODOT's comment that they had no further objections to the annexation request, and recommended approval of the annexation as conditioned and placement on the November 4, 2008 ballot per Resolution 2008-253. The annexation of this property is conditional on the approval of the annexation of the Gish parcel to the west.
3. After proper notice, on August 4, 2008, the Newberg City Council held a hearing to consider the annexation and zoning amendment request.
4. The City Council finds that the applicable criteria have been met as conditioned, and that approval of the application is in the best interests of the community.

THE CITY OF NEWBERG ORDERS AS FOLLOWS:

1. The City Council finds that the annexation and zoning amendment meet the Newberg Development Code criteria as conditioned and adopts the findings, which are attached hereto as Exhibit "A". Exhibit "A" is hereby adopted and by this reference incorporated.
2. Annexation requires the City Council to adopt an ordinance annexing the property, and requires approval at a public vote. If the annexation is approved through these procedures, then the City orders the following:
 - A. The zoning of the property described in Exhibit "C" is changed to portions of R-1 (Low Density Residential), R-2 (Medium Density Residential), and C-2 (Community Commercial) as shown on the map in Exhibit "E". Exhibits "C" and "E" are hereby adopted and by this

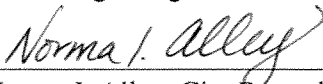
reference incorporated.

3. This order is subject to the following:

- A. Annexation of the Kimball property is conditional on the approval of the adjacent Gish property annexation request by the voters.
- B. A refined traffic study out to year 2025 will be required upon development showing the actual development proposed at that time. No direct access to Highway 99W will be allowed. The traffic study should refine the existing study based on the actual development proposal and determine the number of trips that this development would add to the Springbrook/Hwy 99W intersection.
- C. Upon future development of the property, the development shall contribute its share, based on traffic volume, of the future cost of capacity improvements to the Springbrook Rd/Hwy 99W intersection.
- D. A 30 ft building setback along the north property line will be required upon development of the site.
- E. Development follow best management practices for storm drainage as outlined in the letter from James Bennett to the Yamhill County Board of Commissioners dated 1/30/06.
- F. Upon development, verify the capacity of the Fernwood Road sanitary sewer pump station and upsize if necessary. All public sewer lines must be gravity flow. Complete street frontage improvements along Hwy 99W. The Crestview Drive extension from Oxberg Lakes to 99W, and the eastward extension of Gueldner Drive, must be in place at the time of development
- G. Existing home and veterinary clinic to connect to sewer and water or be removed within two years of annexation.
- H. Upon development of the property, construct a sound wall along the northern property line to be of similar design and coordinated with the sound wall on the adjacent properties to the west.

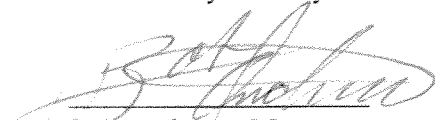
➤ **EFFECTIVE DATE** of this order is the day after the adoption date, which is: August 5, 2008.

ADOPTED by the City Council of the City of Newberg, Oregon, this 4th day of August, 2008.



Norma I. Alley, City Recorder

ATTEST by the Mayor this 7th day of August, 2008.



Bob Andrews, Mayor

QUASI-JUDICIAL HISTORY

By and through Planning Commission Committee at 6/12/2008 & 7/10/2008 meetings.
(committee name) *(date)*

Exhibits:

- Exhibit "A": Findings
- Exhibit "B": Annexation Map
- Exhibit "C": Legal Description
- Exhibit "D": Comprehensive Plan Map
- Exhibit "E": Proposed Zoning Map

EXHIBIT "A": FINDINGS

ANX-08-004

Annexation of 5.8 acres for property located at 4813 E. Portland Road

I. APPLICABLE ANNEXATION REGULATIONS – NEWBERG DEVELOPMENT CODE § 151.261 CONDITIONS FOR ANNEXATION

(A) The subject site must be located within the Newberg Urban Growth Boundary or Newberg Urban Reserve Areas.

FINDING: The site was included within the Newberg Urban Growth Boundary by Order 2007-0001 on January 2, 2007. Certain conditions were placed on the property by Order 2007-0001 and have been included within the recommended annexation conditions of approval.

(B) The subject site must be contiguous to the existing city limits.

FINDING: The subject site is separated from the Newberg city limits by the Gish property. The owner of the Gish property has concurrently applied for annexation, so the annexation of the Kimball property will be conditional on the approval of the Gish annexation.

II. APPLICABLE ANNEXATION REGULATIONS – NEWBERG DEVELOPMENT CODE § 151.262 QUASI-JUDICIAL ANNEXATION CRITERIA

(A) The proposed use for the site complies with the Newberg comprehensive plan and with the designation on the Newberg comprehensive plan map. If a redesignation of the plan map is requested concurrent with annexation, the uses allowed under the proposed designation must comply with the Newberg comprehensive plan.

FINDING: The comprehensive plan designation of the site was changed concurrently with the urban growth boundary amendment application that was approved by Order 2007-0001 on January 2, 2007. The current comprehensive plan designation includes portions of LDR (low density residential), MDR (medium density residential), and COM (commercial). The applicant has proposed zoning of R-1 (low density residential), R-2 (medium density residential), and C-2 (community commercial) that exactly matches the comprehensive plan designations.

The east-west connector road (Gueldner Drive) will be extended eastward through the site towards Benjamin Road in accordance with the comprehensive plan map and the Newberg Transportation System Plan.

A wetland delineation map shows that there are no wetlands on this site. The wetland delineation has been approved by the Department of State Lands.

(B) An adequate level of urban services must be available, or made available, within three years time of annexation, except as noted in division (E) below. An adequate level of urban services shall be defined as:

- (1) *Municipal sanitary sewer and water service meeting the requirements enumerated in the Newberg comprehensive plan for provision of these services.*
- (2) *Roads with an adequate design capacity for the proposed use and projected future uses. Where construction of the road is not deemed necessary within the three-year time period, the city shall note requirements such as dedication of right-of-way, waiver of remonstrance against assessment for road improvement costs, or participation in other traffic improvement costs, for application at the appropriate level of the planning process. The city shall also consider public costs for improvement and the ability of the city to provide for those costs.*

FINDING: As explained below, public facilities will have adequate capacity to accommodate the demands of the site.

Water: The property can connect to an existing 10-inch mainline that runs along Hwy 99W at the property's southern border, and will extend the line within Gueldner Drive on the site.

Storm water: Storm water drainage appears to primarily sheet flow to a drainage ditch along 99W. Improvements to the storm water drainage system will be required upon development to mitigate the additional demand on the system.

Sewer: Sewer service will be provided by connecting to the new line extended north by the Crestview Crossing project and extended east within Gueldner Drive. At time of development, the developer will need to verify the capacity of the Fernwood pump station. Improvements may be necessary. All public sewer lines must be gravity flow.

Roads: The subject property is adjacent to Hwy 99W on its southern side. Upon development, Hwy 99W shall be improved with curbs, gutters, and sidewalks.

The Crestview Drive extension and the Gueldner Drive extension on the properties to the west must be in place prior to development on this site. The applicant has proposed extending Gueldner Drive to the east, which is in accordance with the TSP. The TSP shows Gueldner Drive connecting ultimately to Benjamin Road. This connection would need to be made as far north as possible to avoid impacting the Benjamin Road/Highway 99W intersection. The applicant's concept plan shows an additional road north of and parallel to Gueldner Drive, which provides access for the residential lots.

A Traffic Impact Study was prepared for this project by Lancaster Engineering, which assumed that the Crestview Drive extension to Highway 99W would be built. The proposed conceptual commercial and residential development on the site plus the Gish property to the west and the Thomas property to the east is expected to generate a total of 8,306 new daily, and 847 new weekday PM peak hour trips. Much of the traffic for the commercial center would not be new trips, but would be pass-by or internal trips. This shows that this center will be primarily serving the residents of Newberg and will reduce the number of overall vehicle miles traveled for the residents of Newberg. A total of 2,610 weekday daily and 242 weekday PM peak hour passby trips would be generated by the project, and a total of 1,926 weekday internal trips and 192 weekday PM peak internal trips would be generated. Details of the study methodology, findings, and recommendations are provided in the traffic impact study report.

One important point from the traffic study that has not been sufficiently emphasized to date is that commercial development on this site will reduce the number of shopping trips that Newberg residents currently need to make to Sherwood, McMinnville, Wilsonville, and other communities. One of the primary goals of the State Transportation Planning Rule is to reduce vehicle miles traveled, and the annexation and development of the commercial portion of this site would help meet this goal for the residents of Newberg.

The study concludes that if the City of Newberg takes jurisdiction over Highway 99W then the intersections at Highway 99W and Springbrook Road and Highway 99W and Crestview Drive will operate acceptably and no mitigation will be required. This could only happen if the bypass was built and the City agreed to take jurisdiction, however. The study found that if ODOT retains jurisdiction over 99W then both of these intersection would have unacceptable levels of service and mitigation would be required. The study also found that the intersection of Crestview Drive and the east-west frontage road (now Gueldner Drive) would operate unacceptably and would require mitigation, such as the construction of a roundabout. The report stated that the mitigation for the Crestview/99W and the Springbrook/99W intersections could include adding a third westbound travel lane on Highway 99W between Crestview and Springbrook, or one northbound and one southbound travel lanes on Springbrook Road.

ODOT has commented that the proposed zones do match the City's comprehensive plan and that the Bypass is included within the City's TSP. The Bypass is not considered a planned improvement by ODOT, however, because there is no funding plan in place. They comment that the TIS is therefore flawed because its recommendations depend on the construction of the bypass by 2025 and the downgrading of Hwy 99W to a District level highway. ODOT requested that action be deferred on the annexation until the TIS can be corrected so that its recommendations can be used to support findings that the annexation is consistent with the Transportation Planning Rule. DLCD has also commented that the TIS analysis cannot depend on the construction of the Bypass, since ODOT has stated that the construction of the bypass is not reasonably likely by 2025.

ODOT's supplemental comments on June 12, 2008 referenced a 2005 LUBA decision (Just v. City of Lebanon) that found that the Transportation Planning Rule does apply to zone changes that occur as part of annexations, even though the zone changes correspond to the existing comprehensive plan designations. ODOT's interpretation appears to be correct, so the Transportation Planning Rule applies if it is determined that the proposed annexation will have a significant effect on transportation facilities. ODOT reiterated their request that the transportation studies be revised to not depend on the bypass, as they do not consider it a planned facility because it is unfunded.

The TIS is intended to evaluate the annexation's compatibility with the adopted Newberg TSP and the State highway plan. Both of these plans include the Newberg-Dundee bypass, however, so the applicant must include the potential impact of the bypass in their TIS analysis or the City would find that the analysis is incomplete. The TIS must also consider the project's impact on transportation facilities if the bypass is not built, however. While the bypass is a planned facility in the State Highway Plan, by TPR definitions it is not a "planned facility" and therefore cannot be relied on to mitigate the impacts of development. Lancaster Engineering submitted a supplemental traffic impact analysis on June 11, 2008

that addresses ODOT's concerns. The supplemental analysis does not rely on the bypass to mitigate transportation impacts.

The supplemental traffic impact analysis examined the impact in the year 2025 of the development of the Kimball property. The report pointed out that the Crestview/99W intersection is projected to operate with a v/c ratio in excess of ODOT's 0.70 standard in 2025 under background traffic conditions (with no new development on the Kimball property). If the Kimball property is annexed into the city and developed with the proposed zoning then it is projected to result in 36 additional trips through the Crestview/99W intersection. This equates to an increase of approximately 0.65% over background traffic levels. The supplemental report concludes that annexing this property and rezoning to the proposed City zoning is not expected to have a significant effect upon any existing or planned transportation improvements either with or without construction of the bypass, thus complying with the State's TPR. The Crestview improvements that are being completed by the Crestview Crossing project go beyond the improvements called for in the City's TSP, and the proportionate share costs that will be contributed by development towards future capacity enhancements at Springbrook/99W will mitigate the traffic impacts generated by development on the annexation site. ODOT's supplemental comments dated July 3, 2008 acknowledged receipt of the supplemental traffic analysis and found that the report had been prepared using methodologies that are acceptable to ODOT. ODOT also commented that they looked forward to reviewing the findings regarding the Transportation Planning Rule issues, and pledged to continue to work with the City of Newberg to address congestion issues on OR 99W that result from existing and future proposed development.

If this site is annexed and developed then most of the trips that are generated will impact the Gueldner Drive/Crestview intersection, the Crestview/99W intersection, and the Springbrook/99W intersection. The developer of the Crestview Crossing project on the Gueldner parcel is currently designing (and will construct) the Crestview Drive extension from Oxberg Lakes to 99W and the roundabout and eastward extension of Gueldner Drive. The City is requiring the developer to oversize the Crestview Drive extension and roundabout to meet year 2025 traffic conditions, including the expected development of the Gish, Kimball and Thomas properties. ODOT is currently deeply involved with the City and the Crestview Crossing developer in the design of these improvements. It is therefore reasonable to assume that future development of this parcel will not trigger a need for further improvements at the Gueldner/Crestview roundabout intersection or the Crestview/99W intersection, as both intersections are being designed to accommodate the year 2025 build-out of the Gish, Kimball and Thomas properties. The only remaining intersection of concern is the Springbrook/99W intersection.

The Springbrook/99W intersection does not currently meet ODOT's v/c ratio standards. Development of the Kimball property will add some trips to this intersection and would worsen the performance of the intersection if no mitigation was done. The City of Newberg has already identified this intersection as one that needs improvement, however, and has charged recent developments in the area with impact fees based on the number of trips they added to the intersection. The fees could be used for street improvements that would improve the performance of the intersection, whether those improvements were directly at the intersection or were for a nearby street (such as the future completion of Hayes Street) that would reduce the number of trips at the Springbrook/99W intersection. The new Providence Hospital paid towards the future Springbrook/99W intersection performance improvement based on their trip generation estimates, and the Crestview Crossing development will also be required to pay towards

this performance improvement based on their trip generation estimates. The City will therefore require that, upon development of the Kimball site, the developer pays an impact fee based on trip generation towards the performance improvement of the Springbrook/99W intersection. A refined traffic study will be required at the time of development to estimate trip generation based on the actual proposed development (instead of on the conceptual development shown in the annexation application). This will ensure that the impact of the development of the Kimball site on the Springbrook/99W intersection will be mitigated by future improvements at or near the intersection.

State Transportation Planning Rule:

660-012-0060

Plan and Land Use Regulation Amendments

(1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:

- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);*
- (b) Change standards implementing a functional classification system; or*
- (c) As measured at the end of the planning period identified in the adopted transportation system plan:
 - (A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;*
 - (B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or*
 - (C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.**

Finding: The zone change that will automatically occur upon annexation into the city is not a comprehensive plan amendment. A relatively recent LUBA ruling (*Just v. City of Lebanon*), however, found that the zone change upon annexation could be considered a land use regulation amendment. The Transportation Planning Rule would therefore apply to the project if it is determined that the proposed annexation will have a significant effect on transportation facilities.

The question then becomes whether or not the annexation would significantly affect an existing or planned transportation facility. The annexation would not change the functional classification of a facility or change standards implementing a functional classification system. If there was no mitigation then the annexation would worsen the performance of the existing Springbrook/99W intersection, which already performs below ODOT's standards. The City has already established a precedent for mitigation of traffic impacts at the Springbrook/99W intersection, however, and this site was conditioned to mitigate the traffic impact as part of the UGB amendment process. The Providence Hospital project has paid an impact fee and the Crestview Crossing project will pay an impact fee for transportation improvements based on the number of trips that the project adds to the Springbrook/99W intersection. The developer of the Gish property will pay a similar impact fee based upon the number of trips that the Gish development would add to the Springbrook/99W intersection. The impact fee will be used for improvements at the intersection or for improvements to nearby roads that would reduce the number of trips at the Springbrook/99W intersection. The completion of the Hayes Street/Providence Drive

connection is an example of the type of improvement that would reduce the amount of traffic at the Springbrook/99W intersection. The supplemental traffic analysis, which excluded the impact of the proposed bypass, found that annexation and development of the Kimball property would not have a significant effect on an existing or planned transportation improvement, thus complying with the TPR.

(2) Where a local government determines that there would be a significant effect, compliance with section (1) shall be accomplished through one or a combination of the following:

(a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.

(b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division; such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement, or service will be provided by the end of the planning period.

(c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.

(d) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.

(e) Providing other measures as a condition of development or through a development agreement or similar funding method, including transportation system management measures, demand management or minor transportation improvements. Local governments shall as part of the amendment specify when measures or improvements provided pursuant to this subsection will be provided.

(3) Notwithstanding sections (1) and (2) of this rule, a local government may approve an amendment that would significantly affect an existing transportation facility without assuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility where:

(a) The facility is already performing below the minimum acceptable performance standard identified in the TSP or comprehensive plan on the date the amendment application is submitted;

(b) In the absence of the amendment, planned transportation facilities, improvements and services as set forth in section (4) of this rule would not be adequate to achieve consistency with the identified function, capacity or performance standard for that facility by the end of the planning period identified in the adopted TSP;

(c) Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportation improvements or measures;

(d) The amendment does not involve property located in an interchange area as defined in paragraph (4)(d)(C); and

(e) For affected state highways, ODOT provides a written statement that the proposed funding and timing for the identified mitigation improvements or measures are, at a minimum, sufficient to avoid further degradation to the performance of the affected state highway. However, if a local government provides the appropriate ODOT regional office with written notice of a proposed amendment in a manner that provides ODOT reasonable opportunity to submit a written statement into the record of the local government proceeding, and ODOT does not provide a written statement, then the local government may proceed with applying subsections (a) through (d) of this section.

(4) Determinations under sections (1)-(3) of this rule shall be coordinated with affected transportation facility and service providers and other affected local governments.

(a) In determining whether an amendment has a significant effect on an existing or planned transportation facility under subsection (1)(c) of this rule, local governments shall rely on existing transportation facilities and services and on the planned transportation facilities, improvements and services set forth in subsections (b) and (c) below.

(b) Outside of interstate interchange areas, the following are considered planned facilities, improvements and services:

(A) Transportation facilities, improvements or services that are funded for construction or implementation in the Statewide Transportation Improvement Program or a locally or regionally adopted transportation improvement program or capital improvement plan or program of a transportation service provider.

(B) Transportation facilities, improvements or services that are authorized in a local transportation system plan and for which a funding plan or mechanism is in place or approved. These include, but are not limited to, transportation facilities, improvements or services for which: transportation systems development charge revenues are being collected; a local improvement district or reimbursement district has been established or will be established prior to development; a development agreement has been adopted; or conditions of approval to fund the improvement have been adopted.

(C) Transportation facilities, improvements or services in a metropolitan planning organization (MPO) area that are part of the area's federally-approved, financially constrained regional transportation system plan.

(D) Improvements to state highways that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when ODOT provides a written statement that the improvements are reasonably likely to be provided by the end of the planning period.

(E) Improvements to regional and local roads, streets or other transportation facilities or services that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when the local government(s) or transportation service provider(s) responsible for the facility, improvement or service provides a written statement that the facility, improvement or service is reasonably likely to be provided by the end of the planning period.

(c) Within interstate interchange areas, the improvements included in (b)(A)-(C) are considered planned facilities, improvements and services, except where:

(A) ODOT provides a written statement that the proposed funding and timing of mitigation measures are sufficient to avoid a significant adverse impact on the Interstate Highway system, then local governments may also rely on the improvements identified in paragraphs (b)(D) and (E) of this section; or

(B) There is an adopted interchange area management plan, then local governments may also rely on the improvements identified in that plan and which are also identified in paragraphs (b)(D) and (E) of this section.

(d) As used in this section and section (3):

(A) Planned interchange means new interchanges and relocation of existing interchanges that are authorized in an adopted transportation system plan or comprehensive plan;

(B) Interstate highway means Interstates 5, 82, 84, 105, 205 and 405; and

(C) Interstate interchange area means:

(i) Property within one-half mile of an existing or planned interchange on an Interstate Highway as measured from the center point of the interchange; or

(ii) The interchange area as defined in the Interchange Area Management Plan adopted as an amendment to the Oregon Highway Plan.

(e) For purposes of this section, a written statement provided pursuant to paragraphs (b)(D), (b)(E) or (c)(A) provided by ODOT, a local government or transportation facility provider, as appropriate, shall be conclusive in determining whether a transportation facility, improvement or service is a planned transportation facility, improvement or service. In the absence of a written statement, a local government can only rely upon planned transportation facilities, improvements and services identified in paragraphs (b)(A)-(C) to determine whether there is a significant effect that requires application of the remedies in section (2).

Finding: Sections 2-4 are not applicable because, as determined above, the annexation will not have a significant effect on an existing or planned transportation facility.

In general, with the improvements included in the transportation plan and traffic mitigation measures, adequate transportation facilities will be available to serve the proposed use.

(C) Findings documenting the availability of police, fire, parks, and school facilities and services shall be made to allow for conclusionary findings either for or against the proposed annexation. The adequacy of these services shall be considered in relation to annexation proposals.

Finding: Police services are currently provided to the area by Yamhill County Sheriff's Office. Fire service is provided by Newberg Rural Fire District. The proposed annexation will shift police and fire services to the city. The annexation and development of the property will generate additional needs for police and fire services. The annexation and development also will generate additional revenues to pay for those services, including property tax revenues, franchise fee revenues, and cigarette and liquor tax revenues. Recent growth in these revenues has increased to the point that four additional police officers are proposed in the General Fund budget for FY08-09. However, property tax limitations have capped the growth in assessed value on existing and new properties within the city. Because of this, property tax revenues have not increased sufficiently to cover existing and new needs for public safety personnel. The Budget Committee's proposed budget for FY08-09 would fund an additional three officers with a public safety fee yet to be established. If this fee is established, then this annexed property also would pay. With this fee, annexation and development of this property should generate sufficient revenue to cover increased public safety service needs. The residential development of the property may also increase the demand for parks and school facilities, which will be partially offset by the system development charges for parks and the school construction excise tax.

(D) The burden for providing the findings for divisions (A), (B) and (C) of this section is placed upon the applicant.

FINDING: The applicant has provided written findings for this section.

(E) The City Council may annex properties where urban services are not and cannot practically be made available within the three year time frame noted in division (B) above, but where annexation is needed to address a health hazard, to annex an island, to address sewer or water connection issues for existing development, to address specific legal or contract issues, to annex property where the timing and provision of adequate services in relation to development is or will be addressed through legislatively adopted specific area plans or similar plans, or to address similar situations. In these cases, absent a specific legal or contractual constraint, the Council shall apply an interim zone, such as a limited-use overlay, that would limit development of the property until such time as the services become available.

FINDING: This criterion is not applicable to this property.

NDC § 151.267 Comprehensive Plan and Zoning Designations

- (A) *The comprehensive plan map designation of the property at the time of annexation shall be used as a criterion to determine whether or not the proposed request complies with the Newberg comprehensive plan. A redesignation of the comprehensive plan map may be requested concurrent with annexation. The proposed redesignation shall then be used to determine compliance with the Newberg comprehensive plan.*
- (B) *Upon annexation, the area annexed shall be automatically zoned to the corresponding land use zoning classification which implements the Newberg comprehensive plan map designation. The corresponding designations are shown in the table below. The procedures and criteria of § 151.122 shall not be required.*

***Comprehensive Plan Appropriate Zoning Classification
Classification***

<i>OS</i>	<i>Any zoning classification</i>
<i>LDR</i>	<i>R-1</i>
<i>MDR</i>	<i>R-2</i>
<i>HDR</i>	<i>R-3</i>
<i>COM</i>	<i>C-1, C-2, or C-3 as determined by the Director</i>
<i>MIX</i>	<i>C-2, M-1, or M-2 as determined by the Director</i>
<i>IND</i>	<i>M-1, M-2, or M-3</i>
<i>PQ</i>	<i>Any zoning classification</i>
<i>P/PP</i>	<i>Any zoning classification</i>

- (C) *If a zoning classification is requested by the applicant for other than that described in division (B) of this section, the criteria of § 151.122 shall apply. This application shall be submitted concurrently with the annexation application.*
- (D) *In the event that the annexation request is denied, the zone change request shall also be denied. (Ord. 96-2451, passed 12-2-96)*

Finding: The applicant has requested zoning designations of R-1, R-2 and C-2 that exactly match the comprehensive plan designations on the site. They are therefore not required by the Newberg Development Code to address the criteria under § 151.122, which are the criteria for a comprehensive plan map amendment or zoning map amendment. The zone change from County to City zoning is an automatic change and is not a zoning map amendment because the zones match the comprehensive plan designations. This is significant because the criteria for § 151.122 (below) call for the applicant to make findings addressing the State Transportation Planning Rule. Newberg’s development code does not require the applicant to make findings addressing the State Transportation Planning Rule if the requested zones match the comprehensive plan designations.

NDC § 151.122(3) Procedures for Comprehensive Plan Map and Zoning Map Amendments – Amendment Criteria

- (a) *The proposed change is consistent with and promotes the goals and policies of the Newberg comprehensive plan and this code;*
- (b) *Public facilities and services are or can be reasonable made available to support the uses allowed by the proposed change.*
- (c) *Compliance with the State Transportation Rule (OAR 660-012-0060) for proposals that significantly affect transportation facilities.*

Timing Consideration:

NDC § 151.263 Annexation Procedures

All annexation requests approved by the City Council shall be referred to the voters in accordance with the requirements of this code and O.R.S. 222.

(A) Annexation elections are normally scheduled for the biennial primary or general elections which are held in May and November of even numbered years. Applications for annexation shall be filed with the Planning Division before 5:00 p.m. on October 1 for a primary ballot election in May and before 5:00 p.m. on April 1 for a general ballot election in November. An applicant may request that the Council schedule an annexation ballot measure for a special election date. Applications proposed for review at a special election must be filed with the city eight months prior to the proposed special election date. Filing of an annexation application and having the application deemed complete does not obligate the city to place the annexation question before the voters at any particular election. This division does not obligate the city to process an annexation application within any time frame not required by ordinance or state statute.

(B) The application shall be processed in accordance with the Type III processing procedures outlined in this code. Once the Director receives a completed application for annexation, he/she shall schedule a recommendation hearing before the Planning Commission. The Planning Commission shall make a recommendation to the City Council as to whether or not the application meets the criteria contained in § 151.262. This decision shall be a quasi-judicial determination and not a legislative determination. The Planning Commission may also recommend denial of an application based upon a legislative perception of the request even though the findings support and would allow annexation. A decision to recommend denial of an annexation, even though the findings support the request, shall be specifically stated in the record and noted as a legislative recommendation separate and apart from the quasi-judicial recommendation.

(C) Following the Planning Commission hearing, the Director shall schedule a City Council hearing to consider the request. The City Council shall conduct a quasi-judicial hearing and determine whether or not the application meets the criteria contained in § 151.262. The hearing at the City Council shall be considered a new hearing. If additional testimony is submitted, the Council may, at its own discretion, return the application to the Planning Commission for further review and recommendation. The City Council may also deny an application based upon a legislative perception of the request even though the findings support and would allow annexation. A decision to deny an annexation, even though the findings support the request, shall be specifically stated in the record and noted as a legislative recommendation separate and apart from the quasi-judicial recommendation.

(D) If the City Council approves the annexation request, the proposal may, at the City Council's sole discretion, be placed before the voters of the city as follows:

- (1) The biennial primary or general elections which are held in May and November of even numbered years, or*

(2) *An available special election.*

Recommendation: The applicant has requested that this annexation application be approved by the City Council and placed before the voters at the November 4, 2008 election. If the Council approves the annexation they are not bound to place the annexation on the next available ballot. The decision on when to send an approved annexation to the ballot is at the City Council's sole discretion. In this case staff recommends that the Planning Commission discuss the timing issue and make a recommendation to the City Council based on what they think is in the best interests of the city. Pros: If all three annexation applications (Gish, Kimball, and Thomas) are sent to the ballot at the same time then the benefits of the Gueldner Drive extension to Benjamin Road could be shown. The November 2008 election will have a large voter turnout, which may improve the chances for approval of the annexations. Cons: This annexation is conditional on the approval of the Gish annexation, which may confuse the voters. Also, if the Gish annexation fails then this annexation also would not be approved, despite a potential positive vote. The Planning Commission recommends that this annexation be placed on the November 2008 ballot.

CONDITIONS OF APPROVAL
ANX-08-004

The following conditions of approval apply to the annexation of the property located at 4813 E. Portland Road, Yamhill County Tax Lot 3216-1000.

- A refined traffic study out to year 2025 will be required showing the actual development proposed at that time. No direct access to Highway 99W will be allowed. The traffic study should refine the existing study based on the actual development proposal and determine the number of trips that this development would add to the Springbrook/Hwy 99W intersection.
- Upon future development of the property, the development shall contribute its share, based on traffic volume, of the future cost of capacity improvements to the Springbrook Rd/Hwy 99W intersection.
- A 30 ft building setback along the north property line will be required upon development of the site.
- Development follow best management practices for storm drainage as outlined in the letter from James Bennett to the Yamhill County Board of Commissioners dated 1/30/06.
- Upon development, verify the capacity of the Fernwood Road sanitary sewer pump station and upsize if necessary. All public sewer lines must be gravity flow. Complete street frontage improvements along Hwy 99W. The Crestview Drive extension from Oxberg Lakes to 99W, and the eastward extension of Gueldner Drive, must be in place at the time of development
- Existing home and veterinary clinic to connect to sewer and water or be removed within two years of annexation.

EXHIBIT "C": LEGAL DESCRIPTION

MARCH 25, 2008

LEGAL DESCRIPTION

JOB NO. 0428-0005

ANNEXATION TO THE CITY OF NEWBERG

TAX LOT 1000, TAX MAP NO. 3 2 16

4813 NE PORTLAND ROAD

CITY OF NEWBERG PLANNING FILE NUMBER: ANX-08-004

A PARCEL OF LAND LOCATED IN THE SEBASTIAN BRUTSCHER D.L.C. NO. 51, IN THE EAST ONE-HALF OF SECTION 16, TOWNSHIP 3 SOUTH, RANGE 2 WEST, WILLAMETTE MERIDIAN, YAMHILL COUNTY, OREGON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE PROPERTY DESCRIBED IN INSTRUMENT NUMBER 1997-15739, YAMHILL COUNTY DEED RECORDS, A POINT ON THE NORTH LINE OF THE SEBASTIAN BRUTSCHER D.L.C. NO. 51 FROM WHICH THE SOUTHWEST CORNER OF THE BENJAMIN HEATER D.L.C. NO. 50, (AN ANGLE POINT IN SAID NORTH LINE OF D.L.C. NO. 51), BEARS NORTH 89°22'47" WEST 1540.48 FEET; THENCE CONTINUING ALONG SAID NORTH LINE SOUTH 89°22'47" EAST 372.39 FEET TO THE NORTHWEST CORNER OF THE PROPERTY DESCRIBED IN INSTRUMENT NUMBER 1995-09521; THENCE LEAVING SAID LINE ALONG THE WEST LINE OF SAID PROPERTY, SOUTH 00°15'58" WEST 606.83 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF PACIFIC HIGHWAY 99 WEST (40.00 FEET NORTHERLY, RIGHT ANGLE MEASURE, FROM THE CENTERLINE THEREOF); THENCE ALONG SAID NORTH RIGHT-OF-WAY LINE, ON A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 5494.23 FEET, THE RADIUS POINT OF WHICH BEARS SOUTH 16°59'18" EAST THROUGH A CENTRAL ANGLE OF 04°11'24" AN ARC LENGTH OF 401.77 FEET (CHORD BEARS SOUTH 70°55'00" WEST 401.69 FEET) TO THE SOUTHEAST CORNER OF THE PROPERTY DESCRIBED IN INSTRUMENT NO. 1997-15739; THENCE ALONG THE EAST LINE OF SAID PROPERTY NORTH 00°46'36" EAST 742.25 FEET TO A POINT OF BEGINNING.

CONTAINING APPROXIMATELY 5.79 ACRES.

THE BASIS OF BEARINGS FOR THE DESCRIPTION IS PARTITION PLAT NO. 97-52 YAMHILL COUNTY, PLAT RECORDS.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Michael R. Gates

OREGON
JULY 25, 1990
MICHAEL R. GATES
2449

VALID UNTIL 6-30-07

EXHIBIT "D": COMPREHENSIVE PLAN MAP

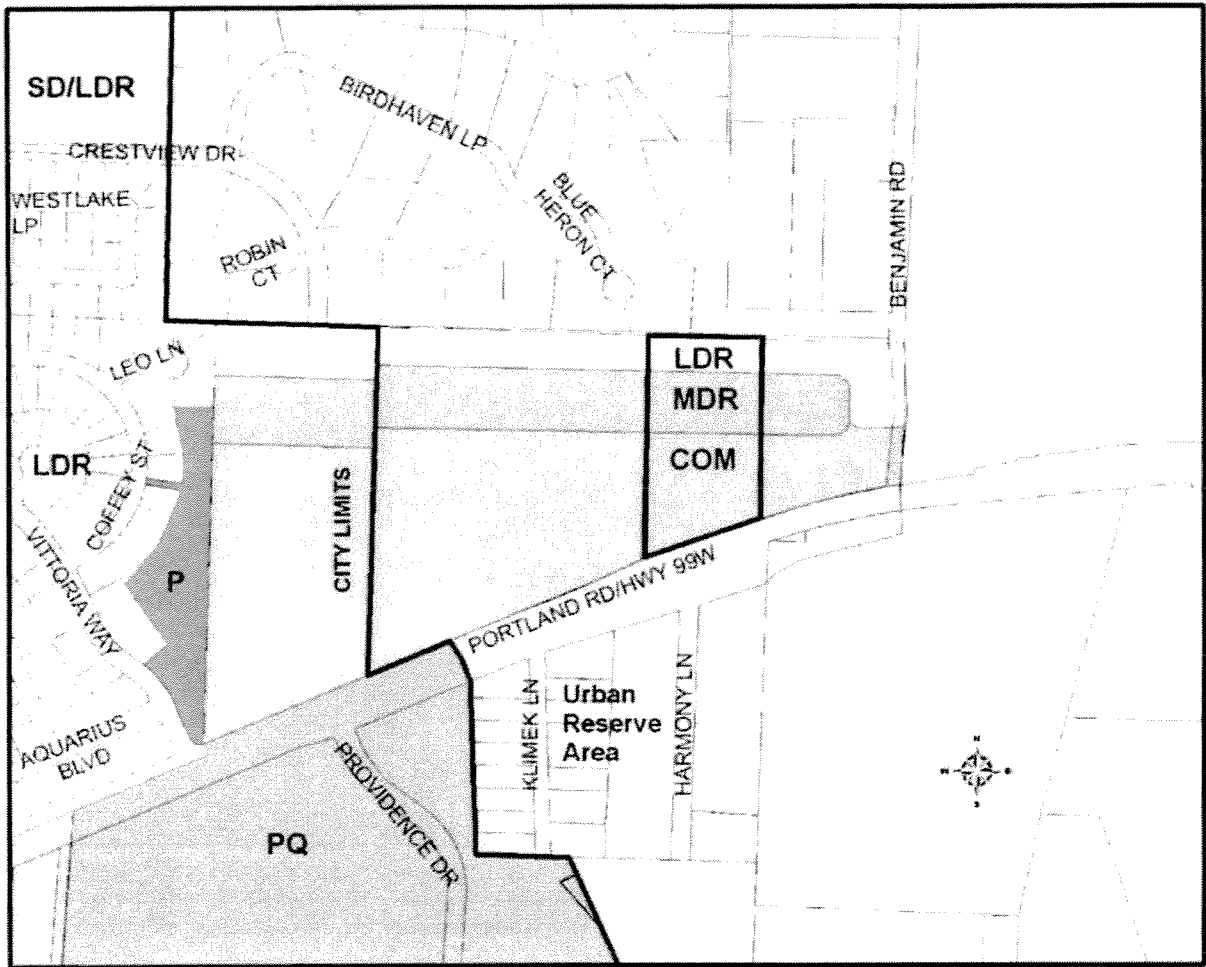
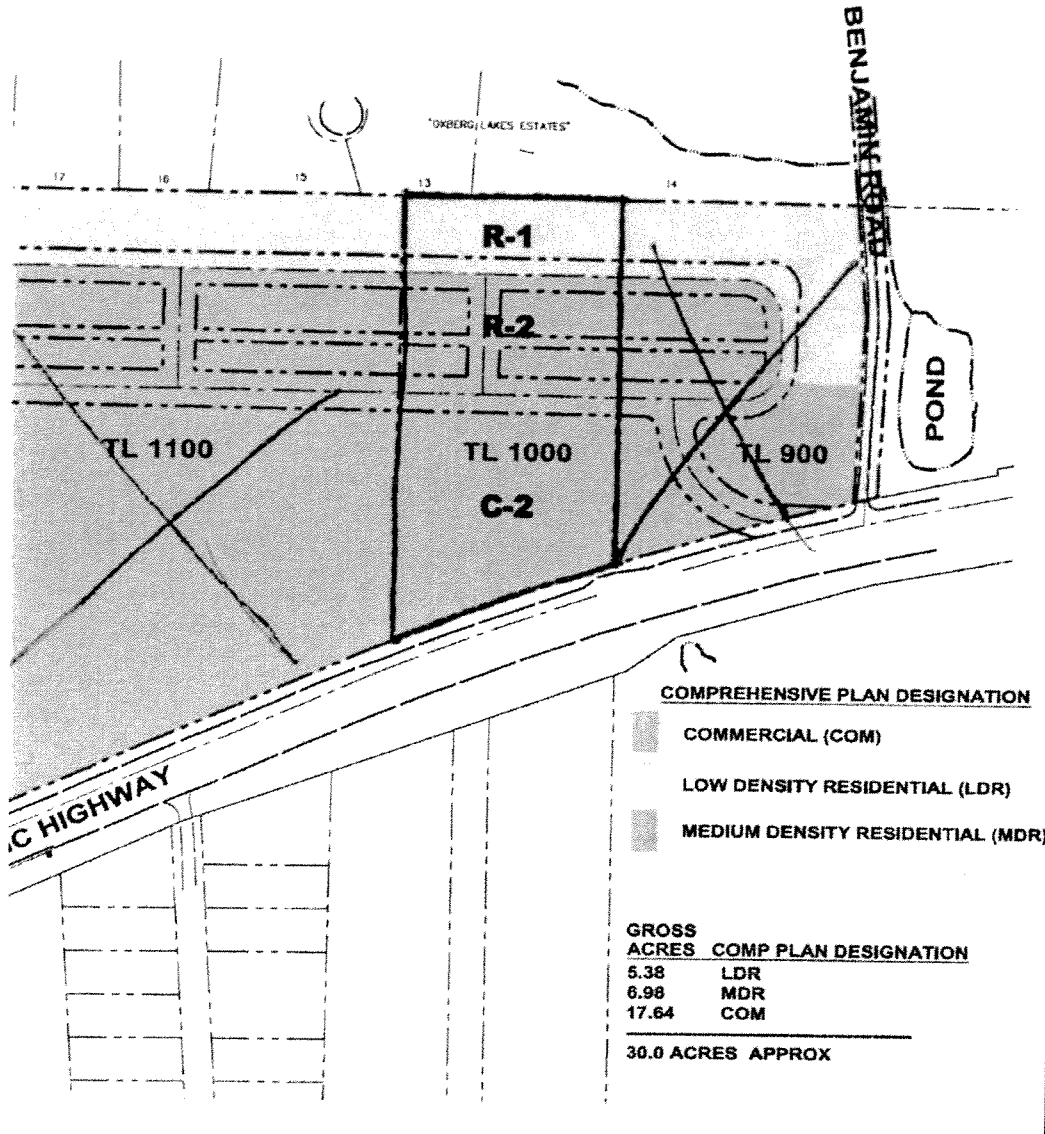


EXHIBIT "E": PROPOSED ZONING MAP





ORDINANCE No. 2008-2701

AN ORDINANCE DECLARING PROPERTY LOCATED AT 4813 E. PORTLAND ROAD, YAMHILL COUNTY TAX LOT 3216-1000, BE ANNEXED INTO THE CITY OF NEWBERG AND WITHDRAWN FROM THE NEWBERG RURAL FIRE PROTECTION DISTRICT SUBJECT TO A PUBLIC VOTE, AND AUTHORIZING AND DIRECTING THE CITY ELECTIONS OFFICER TO CERTIFY TO THE YAMHILL COUNTY CLERK A BALLOT TITLE FOR THE MEASURE TO BE SUBMITTED TO THE ELECTORATE OF THE CITY OF NEWBERG FOR THEIR APPROVAL OF AN ANNEXATION FOR THIS SAME PROPERTY

RECITALS:

1. NewB Properties LLC submitted an application for annexation and consent to annex on March 26, 2008, for property located at 4813 E. Portland Road, Yamhill County tax lot 3216-1000.
2. After proper notice, on August 4, 2008, the City Council held a public hearing on the item: accurately stated objections to jurisdiction, bias, and ex-parte contact; considered public testimony; examined the record; heard the presentation from staff and the applicant; examined and discussed the appropriate criteria to judge the project (as listed in the staff report); considered all relevant information regarding the item; and deliberated.
3. On August 4, 2008, the City Council adopted Order 2008-0014 which affirmed that the annexation as conditioned met the applicable Newberg Development Code criteria.
4. The City of Newberg Charter requires that territory may be annexed into the City of Newberg only upon approval by a majority vote among the electorate of the City.
5. The applicant has requested, and the Planning Commission has recommended, that this matter be placed before the voters at the November 4, 2008 general election.

THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

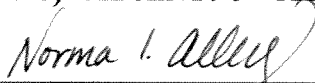
1. The question of annexing the property shown in Exhibit "A" and described in Exhibit "B" shall be submitted to the electorate of the city at the November 4, 2008, special election. Exhibits "A" and "B" are hereby adopted and by this reference incorporated.
2. The City Council directs that all costs associated with placing the item on the ballot be paid for by the applicant/owners. This includes but is not limited to noticing, signage, advertising, and costs assessed by the Yamhill County Clerk to place the item on the ballot. Owners may be required to place monies in escrow to cover the costs of election(s).

3. The City Elections Officer is hereby authorized and directed to certify to the Yamhill County Clerk the ballot title for the annexation measure to be placed before the voters. Further, the City Elections Officer is directed to give all necessary notices of the ballot title and do all other necessary acts and deeds which may be required to place the matter before the voters of the City of Newberg at said election.
4. The City Attorney is directed to have prepared and review the explanatory statement which shall be submitted to the Yamhill County Clerk with the ballot title. Such explanatory statement shall be filed with the City Elections Officer and the City Elections Officer is further directed to certify this explanatory statement to the Yamhill County Clerk.
5. The City Elections Officer is authorized to do all other necessary acts and deeds which may be required to conduct the election concerning this measure.
6. Should this annexation request and the adjacent Gish property annexation request be approved by a majority of the electorate of the City of Newberg at the identified election date, the property shown in Exhibit "A" and described in Exhibit "B", shall be annexed and withdrawn from the Newberg Rural Fire Protection District, and the following events will occur:
 - A. The City of Newberg land use inventory data and GIS data, including the comprehensive plan map and zoning map, will be updated to reflect the new addition.
 - B. The Recorder of the City of Newberg is hereby authorized and directed to make and submit to the Secretary of State, the Department of Revenue, the Yamhill County Elections Officer, and the Assessor of Yamhill County, a certified copy of this ordinance.

➤ **EFFECTIVE DATE** of this ordinance is 30 days after the adoption date, which is: September 17, 2008.


ADOPTED by the City Council of the City of Newberg, Oregon, this 18th day of August, 2008, by the following votes:

AYE: 4 NAY: 2 (CURRIER, ANDREWS) ABSENT: 0 ABSTAIN: 0 VACANT: 1



 Norma I. Alley, City Recorder

ATTEST by the Mayor this 19th day of August, 2008.



 Bob Andrews, Mayor

LEGISLATIVE HISTORY

By and through Planning Commission Committee at 6/12/2008 & 7/10/2008 meetings.
(committee name) (date)

Exhibits:

- Exhibit "A": Annexation Map
- Exhibit "B": Legal Description

EXHIBIT "A": ANNEXATION MAP

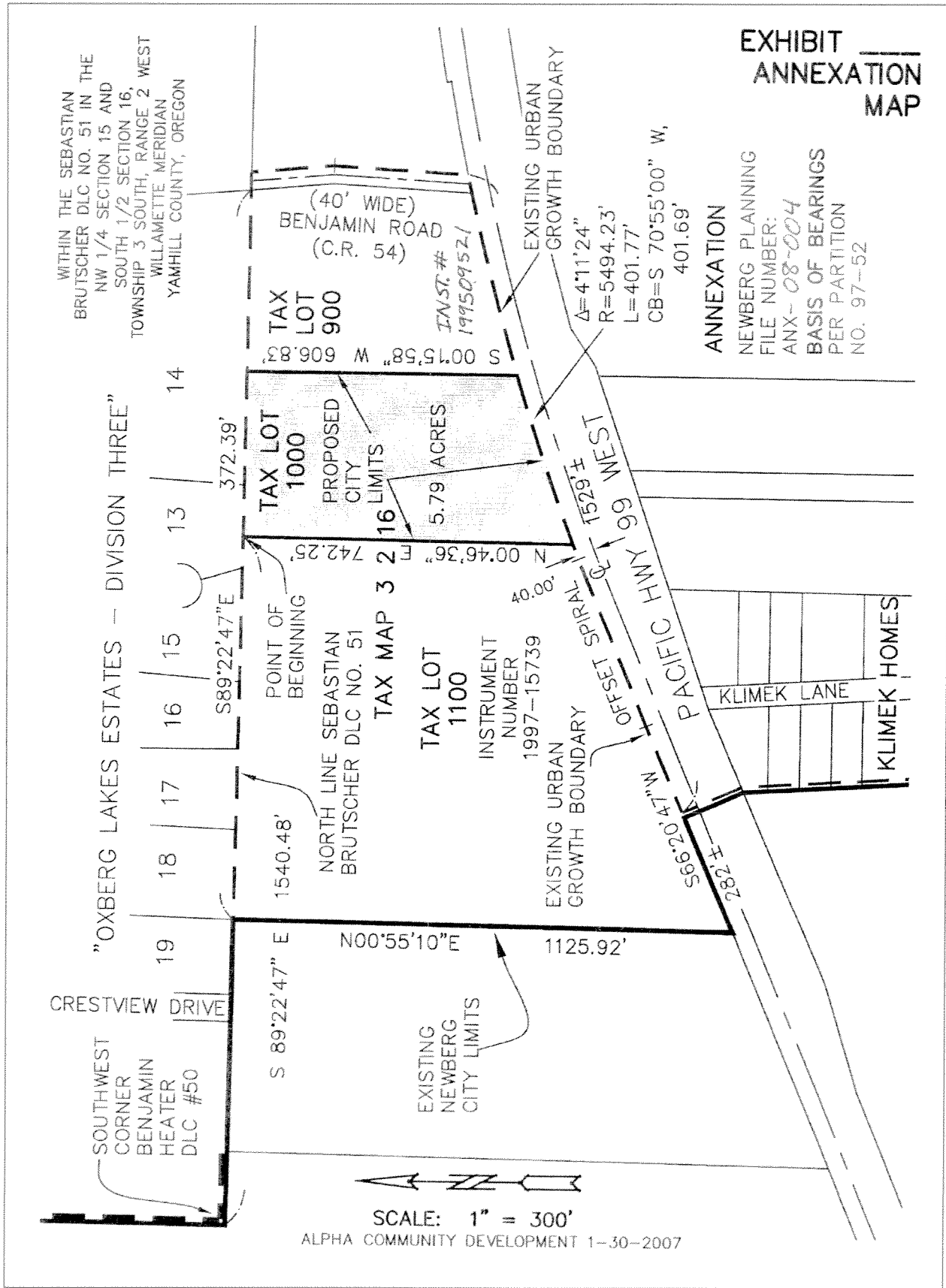


EXHIBIT "B": LEGAL DESCRIPTION

MARCH 25, 2008

LEGAL DESCRIPTION

JOB NO. 0428-0005

ANNEXATION TO THE CITY OF NEWBERG

TAX LOT 1000, TAX MAP NO. 3 2 16

4813 NE PORTLAND ROAD

CITY OF NEWBERG PLANNING FILE NUMBER: ANX-08-004

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LAND SURVEYOR

Michael R. Gates

OREGON
JULY 25, 1990
MICHAEL R. GATES
2449

VALID UNTIL 6-30-07